Supreme Court of the United States

OCTOBER TERM, 1948.

No. 187.

WATCHTOWER BIBLE AND TRACT SOCIETY, INC., GEORGE KELLY, MAURICE L. HARE and EARL W. HITCH,
Petitioners,

—against—

METROPOLITAN LIFE INSURANCE COMPANY,
Respondent.

RESPONSE TO PETITION FOR REHEARING.

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THE COURT PRESS, N. Y. C.

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The present petition in this cause meets none of the substantive requirements of Rule 33 of this Court concerning an application for a rehearing. It lacks:

(1) any showing of any "intervening circumstances of substantial or controlling effect" since the filing of the petition for writ of certiorari;

(2) any showing of "other substantial grounds, available to petitioners although not previously presented"; and

(3) a certificate of petitioners' counsel that the petition is restricted to either or both of the grounds specified in (1) and (2) above.

Such complete disregard of Rule 33 cannot be excused as mere irregularity. It goes to the very availability of the remedy to unsuccessful litigants. In Rule 33 the Court has narrowly defined the classes of cases in which petitions for rehearing will be entertained. Petitioners have not even attempted to bring this application within those classes.

I.

If there is any "intervening circumstance" referred to in the petition it is an unsigned article in the Columbia Law Review for November, 1948. In that article—evidently the work of a student editor—some criticism is leveled at the decision below of the New York Court of Appeals. The author concludes the law should be that Jehovah's Witnesses may be excluded from an apartment building only if all of the tenants unanimously and expressly exclude them.

For present purposes it should be sufficient to point out that the theory advanced and the authorities cited in that article were offered by petitioners to the courts below. By unanimous vote of the thirteen state court judges the theory was rejected and the very authorities cited—mostly decisions of this Court—were found to support respondent's position. If the law review article is offered as an intervening circumstance "of substantial or controlling effect", it provides petitioners with cold comfort indeed. If it is not so offered, it is not relevant to this petition.

II.

Every argument in the petition for rehearing has heretofore been presented by petitioners to this Court. The old contentions are reiterated (Petition, pp. 2, 3, 6): the Parkchester regulation would be unconstitutional had it been a New York City ordinance; the decisions below are in conflict with those of this Court; Jehovah's Witnesses are not trespassers against the tenants; and apartment dwellers of the nation suffer because Jehovah's Witnesses cannot reach them.

There is nothing new here. No new cases are cited;

no new theories of law are propounded by petitioners' counsel. Petitioners complain that the "symmetry" (*id.*, p. 6) of this Court's decisions in the Jehovah's Witnesses cases has been broken by the holdings below. But that is precisely what they argued in their certiorari petition. They further assert that the denial of certiorari creates an inconsistency in this Court's decisons. But asserted inconsistency in the rulings of this Court is futile in support of an application for a rehearing (*Morgan* v. *United States*, 304 U. S. 1, 26 [1937]). Moreover, the holdings below are entirely consistent with the structure of the law pronounced by this Court in cases involving Jehovah's Witnesses.

In support of their position that the Court should accept this and the *Hall* case (No. 400) for review, petitioners declare that Jehovah's Witnesses will continue to bring up cases from other jurisdictions presenting the same questions until this Court has accepted them for review (*id.*, pp. 6, 7). That amazing declaration, made now for the first time, is more threat than argument. Few unsuccessful litigants would have the temerity to suggest that the Court must hear them now, for otherwise they intend to disregard state court rulings and persist in bringing up other cases until they are heard (cf. *id.*, pp. 6-8). In any case, surely this is not a "substantial" ground for a rehearing.

III.

The failure of petitioners' counsel to supply the certificate required by Rule 33 has made the foregoing discussion necessarily conjectural. To our knowledge, no circumstance has intervened which could have

affected the result already reached by the Court. Nor has there been a single ground of argument available to petitioners—substantial or otherwise—which was not submitted to the Court upon the original petition.

In short, petitioners' counsel would have great difficulty in conscientiously executing the required certificate. Certainly nothing in the petition for rehearing would justify its execution. Whether inadvertently or otherwise, petitioners' counsel, in omitting to furnish the certificate, ignored the rules of the Court, with the result that the rehearing petition is defective.

Conclusion.

The petition for rehearing is no more than a warmed-over summary of the earlier petition for a writ of certiorari. Its arguments, not properly before the Court upon an application of this kind, have already been answered at some length in our brief opposing that earlier petition.

After hearing all of the contentions which petitioners are now reiterating, this Court denied their application for review of this cause. Protraction of this litigation by an application which utterly fails to meet the substantial requirements of Rule 33 is unwarranted. *Interest reipublicae ut sit finis litium.*

Respectfully submitted,

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